No. 46110-2-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

REGINALD JUNTUNEN,

Appellant.

Appeal from the Superior Court of Washington for Lewis County

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Respondent's Brief

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II. STATEMENT OF THE CASE

On September 22, 2007, Deputy J. McGinty, Lewis County Sheriff's Office, was dispatched to 202 Ajlune Road, Mossyrock, WA, a campground within the boundaries of Lewis County, for a report of sexual assault of an 8 year old child. CP 8. The reporting party, J.H.,[1] advised that her daughter, S.E.H. (DOB: 09/02/1999) had just been sexually assaulted by an unknown subject who may still be in the campground. CP 8-9. The male was described as dark skinned adult with short hair, wearing a hoodie and stocking cap. CP 9. He was also possibly driving a green in color Honda style car. *Id.*

Detective McGinty made contact with S.E.H. regarding the incident. *Id.* S.E.H. explained they arrived at the campground sometime the night before. S.E.H. advised she got up the next morning exited the motorhome and rode her bicycle to the bathrooms nearby. *Id.*

[1] The State will refer to the victim and her family members by their initials to protect the victim's privacy.

During a walkthrough of the campground, S.E.H. told Detective McGinty she had originally seen the adult man standing near the playground near the bathrooms. *Id.* S.E.H. stated she parked her bike near a camp spot approximately 20 feet away from the man. *Id.* She stated the man told her he had a knife and ordered her to go into the bathroom. *Id.* She said the man followed her up towards the bathroom. *Id.* S.E.H. stated she was washing her hands after using the bathroom when the man entered the bathroom. *Id.* S.E.H. advised the man pushed her to the floor and held his hand on her chest and stood over the top of her. *Id.* When she tried to scream for help, the man told her to stop screaming that he had a knife and he would cut her. *Id.* S.E.H. said she did not actually see a knife at this time but did not try to yell any further. *Id.* S.E.H. said the man then told her to remove her pants, which she refused to do. *Id.* S.E.H. stated the man then pulled her pants down to her knees. CP 9-10. During this time the man began to rub his hands over the top of her front privates and back privates also known as the vagina and buttocks area. CP 10.

When asked if the man had put anything inside of her private area, S.E.H. stated, no, he only touched the outer portions of her body. *Id.* S.E.H. stated she did not know how long this occurred for

but that the man then put something on her. *Id.* When asked what it was, S.E.H. said she did not know, but stated it was white like lotion and felt warm. *Id.* When asked where the man put this substance, S.E.H. looked down and stated on her front privates. *Id.* Detective McGinty asked her if the man had gotten naked in the bathroom and she said no. *Id.* Detective McGinty asked if S.E.H. had seen the man's private parts and she stated no. *Id.* Detective McGinty asked S.E.H. if she knew where the substance had come from and she also stated no. *Id.*

S.E.H. said that after the substance was put on her by the male, he then told her to stay in the bathroom and wait for five minutes before she left. *Id.* The man fled the scene traveling in a yellowish type car out of the parking area. *Id.* Detective McGinty asked S.E.H. how she knew that, and S.E.H. stated because she did not wait the five minutes, but rather got up immediately and was able to see the subject get into the car. *Id.*

S.E.H. described the adult man as dark skinned and approximately six feet tall, with a skinny to medium build and brown hair. *Id.* S.E.H. further advised the subject was wearing a black hoodie sweatshirt with a knit stocking type cap, unknown color, wearing jeans and tennis shoes. *Id.* S.E.H told Detective McGinty

that after leaving the bathroom she went back to the campsite and told J.H. about the incident *Id.* S.E.H. also said she wiped the white lotion substance off of herself with a tissue. *Id.*

Detective McGinty contacted J.H., who said she was still in the motor home reading her book when S.E.H. was out riding her bicycle. *Id.* J.H. stated S.E.H. came into the motorhome, screaming and crying, "he cut me, he cut me, he hurt me," although no physical injuries could be located on S.E.H. CP 10-11. J.H. said once S.E.H. calmed down, she explained that the man had a knife and hurt her. CP 11. J.H. advised she observed S.E.H. using a tissue to wipe herself underneath her pajamas, which S.E.H. told her was put there by the man. *Id.* Deputy Riordan carefully collected the remnants of what was believed to be the suspect's ejaculate recovered from the tissue and placed it into evidence. *Id.*

On June 12, 2012, Detective Callas was advised that Washington State Patrol (WSP) Crime Laboratory had discovered a DNA match made from the DNA profile recovered from the semen stain off the tissue S.E.H. used to wipe the white substance off of her right after the attack. *Id.* Detective Callas was advised that it would take about 30 days for the Crime Lab to provide the suspect's identity. *Id.*

On July 2, 2012 Detective Callas received a copy of the WSP Crime Laboratory Report dated June 28, 2012. *Id.* The report advised the DNA profile of Individual A, (the suspect,) obtained from the semen stain on the tissue was searched against the WSP Combined DNA Index System (CODIS) data bank. *Id.* The report indicated that a match had been declared and the DNA profile was that of Reginald Juntunen, including his state ID number and date of birth. *Id.* Checking the Spillman search engine, Detective Callas was able to locate Juntunen, confirming both his State ID number and his date of birth. *Id.* Furthermore, Detective Callas was able to confirm that Juntunen currently lived in the Winlock area and appears to have lived in Lewis County in September 2007. *Id.*

On July 5, 2012, Detective Callas made contact with S.E.H. at the Lewis County Sheriff's Office. *Id.* Detective Callas re-interviewed S.E.H. about the incident from 2007. *Id.* S.E.H. again stated she was riding her bicycle around the campground. *Id.* She said the man was standing about twenty feet outside of the bathroom area and he called over to her to come and look at something. *Id.* S.E.H. advised the man then grabbed her placing his hand over her mouth. *Id.* S.E.H. stated she bit the subject's hand in an attempt to get away and he told her not to bite him because he

had a knife. *Id.* S.E.H. stated she never saw a knife, but she feared he not only had one, but would stab her with it and kill her. CP 11-12. S.E.H. said the man took her into the girls' bathroom, where he told her to take off her pants. CP 12. S.E.H. refused to take off her pants, but the man pulled her panties down to her knees. *Id.* S.E.H. stated the man was also on his knees with his pants and underwear down. *Id.* She said she saw "his private." *Id.*

S.E.H. stated the man then rubbed lotion from a tube that looked like Neosporin on her butt. *Id.* He then forced her to the floor rubbing her buttocks with his penis and penetrated her anus with his penis. *Id.* When asked if he put his penis in her butt cheeks or the place she goes poop, S.E.H. said "the place she goes poop" and advised that it hurt. *Id.* S.E.H. further advised the man also touched his penis with his hand and left semen on her. *Id.*

On July 6, 2012 the Department of Licensing advised Juntunen, (along with Heidi A. Moses,) was the registered owner of a green 1998 Toyota Camry 4 door. *Id.* On July 26, 2012 Detective Callas contacted Juntunen, who was in the lobby of the Lewis County Superior Court following a hearing on pending charges. *Id.* Juntunen agreed to come down to the Sheriff's Office. *Id.* Once in an interview room, Juntunen agreed to talk to Detective Callas

about the 2007 incident after being fully advised of his Miranda Warnings. *Id.* Juntunen advised he was 24 years old, and would have been 19 years old in 2007. *Id.* Initially, Juntunen denied knowing where Mossyrock/Ajlune Park was, but later admitted he had been to the park camping with family when he was nine years old. *Id.* Juntunen stated the only other time he was ever there was two years ago when he was fishing with a friend. *Id.* Juntunen denied ever being at that park in 2007. *Id.* Juntunen further denied ever assaulting a child. *Id.* Juntunen advised he currently owns a 1998 Toyota Camry; however, he denied that it is green and stated he did not own it in 2007. *Id.* When asked by Detective Callas if he could explain how his DNA was recovered from semen on a female child, Juntunen's eyes got very large, he appeared to be in shock, and he simply said "no." CP 12-13. When Detective Callas inquired further he stated he had nothing else to say. CP 13.

On July 22, 2012 the State charged Juntunen with two counts (Counts I and II) of Rape of a Child in the First Degree and one count (Count III) of Kidnapping in the First Degree with Sexual Motivation. CP 1-5. The State included special allegations in Counts I, II and III of deliberate cruelty, particularly vulnerable victim, and that the offense was predatory. CP 1-5. The State

included the special allegation in Counts II and III that the victim was under 15 years of age pursuant to RCW 9.94A.837 thereby invoking the provisions of RCW 9.94A.507(3)(c)(ii). CP 2-5. Juntunen was given court appointed defense attorney Christopher Baum. RP 40. Mr. Baum had been practicing for approximately 10 years at that time, six years as a deputy prosecutor and had spent the last four years doing work as a defense attorney. RP 38-39.

Mr. Baum discussed Juntunen's case numerous times with the deputy prosecuting attorney in an attempt to resolve the matter. RP 42. The deputy prosecutor told Mr. Baum that she believed Juntunen's actions were particularly egregious and the aggravating factors charged were appropriate. RP 42-43. Mr. Baum attempted on several occasions to get the deputy prosecutor to drop the aggravating factors. RP 43. The deputy prosecutor was unwilling to drop the aggravating factors. RP 43.

Juntunen also told Mr. Baum that he was the one who committed the offense, but was adamant that he never penetrated S.E.H. RP 44. Mr. Baum interviewed the victim and found her to be very credible. RP 46. Mr. Baum also knew he would not be able to have Juntunen testify at trial because he had admitted to Mr. Baum he had committed the offense and Mr. Baum could not elicit

perjured testimony. RP 47. Mr. Baum looked into the DNA issue. RP 47-49. Mr. Baum's professional opinion that there was a high likelihood of a criminal conviction if Juntunen took the case to trial and it was a great risk to Juntunen given the aggravating factors. RP 49. Mr. Baum knew from his experience in Lewis County that people with similar cases had received sentences upward of 600 months. RP 49.

Juntunen ultimately plead guilty to Child Molestation in the First Degree with a stipulation of the aggravating factor that the offense was predatory in nature. CP 29-44. In the stipulation it stated that Juntunen understood he was subject to a minimum sentence of 25 years to life imprisonment. CP 31. The Honorable Judge Richard Brosey took the guilty plea from Juntunen. RP 1-18. Juntunen was sentenced on December 12, 2012 to a minimum term of 300 months and a maximum term of life imprisonment. CP 59-74.

On December 10, 2013 Juntunen filed a timely motion to withdraw his guilty plea, citing ineffective assistance of his trial counsel led him to make a plea that was not informed and he did not have a fair opportunity to defend himself. CP 85-121. Juntunen argued that because Mr. Baum prosecuted cases for the City of

Vader, this created a "clear conflict of interest." CP 85, 100-05. Juntunen also argued the prosecutor improperly did not use her discretion and therefore failed to comport with the prosecutorial standards set forth in RCW 9.94A.401-.411. CP 97-99. The State filed a response. CP 123-83.

A hearing on the motion to withdraw the guilty plea was held on February 14, 2014. RP 19. The State called Mr. Baum to testify about what had transpired in regards to Juntunen's case. *See* RP 20-76. Ultimately Judge Brosey ruled that nothing in the motion to withdraw the guilty plea convinced him that Mr. Baum's actions were not legitimate trial tactics. RP 87. The trial court ruled Mr. Baum's reason for not retaining a DNA expert was plausible. RP 87-88. Judge Brosey denied the motion to withdraw the guilty plea, stating that while another attorney may, in hindsight, have done some things differently, it was not ineffective assistance of counsel. RP 89. Juntunen timely appeals the trial court's ruling. CP 189-206.

The State will supplement the facts in the argument section below.

III. ARGUMENT

A. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED MR. JUNTUNEN'S MOTION TO WITHDRAW HIS GUILTY PLEA.

Mr. Juntunen argues (1) he received ineffective assistance from his trial counsel, (2) that several of the trial court's findings of fact lacked sufficient factual support, (3) his guilty plea was invalid because it was made without effective assistance of his counsel, (4) due to his counsel's truncated investigation he was unable to make an informed plea and (5) his trial counsel representation was a conflict of interest. The trial court did not abuse its discretion and Juntunen entered a knowing and voluntary plea of guilty to the charge of Child Molestation in the First Degree. This Court should affirm the trial court's ruling denying the motion to withdraw the guilty plea.[2]

The State will break its argument into six sections, (1) standard of review, (2) sufficiency of the evidence to support the trial court's findings (3) ineffective assistance of counsel, (4) there was no conflict regarding Mr. Baum's municipal prosecution

[2] The State is restructuring the brief as Juntunen does not address the ultimate issue of whether the trial court abused its discretion and instead argues extensively about trial counsel's alleged ineffective assistance of counsel without tying it to the trial court's determination that Juntunen made a knowing and voluntary plea of guilty.

contract, (5) the voluntariness of the plea, and (6) that Juntunen did not meet his burden to show his guilty plea should be withdrawn to correct a manifest injustice.

1. Standard Of Review.

A trial court's decision on a motion to withdraw a guilty plea for abuse of discretion, and the findings of fact that support this decision are reviewable for substantial evidence. *State v. Blanks*, 139 Wn. App. 543, 548, 161 P.3d 455, 457 (2007); *citing State v. Padilla*, 84 Wn. App. 523, 525, 928 P.2d 1141, *review denied*, 132 Wn.2d 1002 (1997), *State v. Brockob*, 159 Wn.2d 311, 343, 150 P.3d 59 (2006).

Substantial evidence exists when the evidence is sufficient to persuade a rational, fair-minded person of the truth of the finding based upon the evidence in the record. *State v. Lohr*, 164 Wn. App. 414, 418, 263 P.3d 1287 (2011) (citation omitted). The appellate court defers to the fact finder regarding the credibility of witnesses and the weight to be given reasonable but competing inferences. *State ex. rel. Lige v. County of Pierce*, 65 Wn. App. 614, 618, 829 P.2d 217 (1992), *review denied* 120 Wn.2d 1008 (1992).

Assignments of error unsupported by argument or reference to the record will not be considered on appeal. *Lohr*, 164 Wn. App.

at 419. Findings not assigned error become verities on appeal. *Id.* at 418.

A trial court's determination that trial determination that a defendant received effective representation from his or her attorney is a mixed question of fact and law and is reviewed de novo. *State. v. A.N.J.,* 168 Wn.2d 91, 109, 225 P.3d 956 (2010).

2. The Trial Court's Findings Are Supported By Substantial Evidence.

Juntunen's assignments of error are confusing and the State has thoroughly read through the briefing in an attempt to reconcile what appears to be a misstatement in the assignment of errors with the actual briefing. Assignment of Error (1) states, "The trial court erred it made numerous findings of fact without reliable factual support of the record (each of which is described separately in Section IV, C below). Brief of Appellant 1. While this somewhat comports with General Order 1998-2, Juntunen is still required under RAP 10.4(c) to include verbatim the portions of the record for the Findings of Fact that he is challenging. Under section IV, C there is no such section. See Brief of Appellant 25-45. The State can only assume that "C" was a scriveners error and Juntunen meant to state section IV, A, as that section is titled "SEVERAL OF

THE TRIAL COURT'S FINDINGS LACK SUFFICIENT FACTUAL SUPPORT IN THE TRIAL COURT RECORD, ENTERING THESE FINDINGS WAS AN ABUSE OF DISCRETION, THEY ARE NOT BINDING ON REVIEW." Brief of Appellant 16. In this section Juntunen attacks only four of the trial court's findings, 1.2, 1.3, 1.20 and 1.32, although he only includes the verbatim wording for findings 1.20 and 1.32. Therefore, with the exception of these four findings of fact, the remainder of the findings of facts entered by the trial court are verities on appeal. *Lohr*, 164 Wn. App. at 419.

Findings of Fact 1.2 and 1.3 come from the Affidavit of Probable Cause and the State's Response to the Motion to Withdraw Guilty Plea as well as the testimony of Mr. Baum. RP 44; CP 8-13, 123-25.

> Finding of Fact 1.2 states:
>
> > S.E.H. was riding her bike around the campground when a male subject approached her, stated he had a knife and ordered her to the bathroom. Once inside the bathroom the male subject removed his pants. When S.E.H. attempted to scream, the subject again told her he had a knife and would cut her. S.E.H. could not see the knife, but believed the subject had a knife. The male subject then rubbed her vagina and buttocks.

RP 44, CP 8-13, 123-25. Finding of Fact 1.3 states:

> The male subject then put something on her vagina that was white and felt like warm lotion. After the subject put the substance on her, he fled the bathroom and drove off in a yellowish car. S.E.H. went screaming back to her camper and told her mother. S.E.H. then wiped the white substance off with a tissue.

Id.

Juntunen bears the burden to show there is not sufficient evidence to persuade a reasonable person of the trial court's findings. *A.N.J.*, 168 Wn.2d at 107 (internal citations omitted). Juntunen did not take the stand, produce an affidavit or declaration, or argue these facts were incorrect. *See* RP and CP. Juntunen submitted a declaration from his mother, Heidi Moses, but that declaration apparently never made it into the court record as it is not designated in the Clerk's papers, therefore there is no way to know what was stated in that declaration.[3] RP 21-23; See CP. Juntunen also does not cite to the record in his argument regarding findings of fact 1.2 and 1.3 so it is difficult for the State to figure out where, for example, the "grossly different descriptions to different individuals about what happened" are. Brief of Appellant 17. Neither this Court nor the State is required to comb the record looking for support for Juntunen's arguments. *See State v. Brousseau,* 172

[3] The State could not find the declaration in the court record.

Wn.2d 331, 353, 259 P.3d 209 (2011); *Lawson v. Boeing Co.,* 58 Wn. App. 261, 270-71, 792 P.2d 545 (1990) ("The failure to cite to the record is not a formality. It places an unacceptable burden on opposing counsel and on this court.").

Finding of Fact 1.20 states:

> Baum strategically decided against obtaining a DNA expert, which based on defendant's admission, Baum believe would only corroborate the State's case against his client.

RP 68, 70-71. Juntunen only objects to the portion of the finding that State's Baum "strategically decided against obtaining a DNA expert" because Juntunen believes the determination that Baum's actions were strategic is a conclusion of law. Brief of Appellant 17-18. But the trial court did not find that the strategy was reasonable in the finding of fact, just that Mr. Baum's decision was his strategy, which is what was expressed and stated by Mr. Baum while he testified. *Id.* There is substantial evidence to support Finding of Fact 1.20.

Finding of Fact 1.32 states:

> Defendant did not present any evidence beyond the self-serving allegations of his mother to show that his guilty plea was not voluntarily made.

CP 187. The trial court's determination regarding the credibility of the witnesses is given deference by the appellate court. *State ex. rel. Lige v. County of Pierce*, 65 Wn. App. at 618. Further, there is no copy of Ms. Moses' statement anywhere in the record for this Court to even review. "It is the appellant's duty to provide an adequate record so the appellate court can review assignments of error." *King County Dep't of Adult & Juvenile Det. v. Parmelee*, 162 Wn. App. 337, 360, 254 P.3d 927 (2011).[4] Juntunen's challenge of Finding of Fact 1.32 fails.

3. Juntunen Received Effective Assistance From His Counsel.

To prevail on an ineffective assistance of counsel claim Juntunen must show that (1) the attorney's performance was deficient and (2) the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 688, 687, 104 S. Ct. 2052, 80 L. Ed. 674 (1984); *State v. Reichenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004). The presumption is that the attorney's conduct was not deficient. *Reichenbach*, 153 Wn.2d at 130, *citing State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

[4] The State looked through the entire Superior Court file for Reginald Juntunen, Lewis County Case Number 12-1-00473-5, and could not find a declaration or affidavit of Heidi Moses in the file.

Deficient performance exists only if counsel's actions were "outside the wide range of professionally competent assistance." *Strickland*, 466 U.S. at 690. The court must evaluate whether given all the facts and circumstances the assistance given was reasonable. *Id.* at 688. If counsel's performance is found to be deficient, then the only remaining question for the reviewing court is whether the defendant was prejudiced. *State v. Horton*, 116 Wn. App. 909, 921, 68 P.3d 1145 (2003). Prejudice "requires 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Id.* at 921-22, *citing Strickland v. Washington*, 466 U.S. at 694.

Mr. Baum acted reasonably in light of Juntunen's admission to Mr. Baum that he kidnapped and forcibly had sexual contact with S.E.H. in the bathroom of the campground. RP 44; CP 185. This information limited Mr. Baum's actions in Juntunen's case as Mr. Baum could not have Juntunen testify at trial that Juntunen did not commit the crime of Child Molestation in the First Degree or Kidnapping in the First Degree. See RPC 3.3; RP 47. A lawyer is bound by the Rules of Professional Conduct. A lawyer shall not knowingly "offer evidence that the lawyer knows to be false." RPC

3.3(4). Therefore, Mr. Baum was constricted as to how he could proceed with the Juntunen's case. RP 47; CP 185.

Mr. Baum understood the climate for which he would be potentially trying the case, as he had been practicing in Lewis County for 12 years. RP 38-39. Mr. Baum had litigated hundreds of sexual assault cases as a prosecutor and as a defense attorney. RP 39. Mr. Baum understood the reaction to these type of allegations in Lewis County and the significance of horrific nature of what was alleged. RP 59. Mr. Baum explained that he had seen the courts in Lewis County routinely "hand out 300, 400, 500, 600 month sentences without a problem, and I think in this instance this type of case is the type of case that shocks the conscience more than almost any other type." RP 49. It was Mr. Baum's professional opinion, having practiced in Lewis County, that the jury would have found all the aggravating factors and the judge would have reacted to those findings by handing down a sentence of substantially more than 25 years to life. RP 50. The sentencing judge even made a comment that he would have given a greater sentence then 25 to life. RP 50.

Mr. Baum's understanding of how the case would likely play out in a Lewis County courtroom and the limitations he was now

working with left Mr. Baum to look into the DNA issue and attempt to heavily negotiate with the deputy prosecutor, both of which he did. RP 42-43, 47-49, 56-59, 64-74; CP 186. Mr. Baum also interviewed the victim, and although he noted there were discrepancies in the different versions she had relayed to people of the event, Mr. Baum found S.E.H. to be quite credible. RP 46.

Mr. Baum provided effective assistance of counsel throughout his representation of Juntunen. The trial court's finding that Juntunen did not establish Mr. Baum's performance was deficient is substantiated by the record and the sound legal principals. This Court should affirm the trial court's denial of Juntunen's motion to withdraw his guilty plea.

a. Juntunen did not establish that the DNA expert would reach a different conclusion.

Juntunen argues that Mr. Baum's failure to secure an expert regarding the DNA collected was ineffective assistance of counsel and requires reversal of the trial court's denial of his motion to withdraw his guilty plea. Brief of Appellant 31-41. Juntunen did not establish at the plea withdrawal hearing that a DNA expert would reach a different conclusion regarding the evidence. Therefore,

Juntunen cannot show his counsel was ineffective for failing to retain such an expert, as any argument is purely speculative.

In *Holder v. United States* Holder claimed his defense counsel was ineffective for failing to obtain an independent ballistics expert to review and testify regarding whether Holder fired his weapon inside the bank. *Holder v. United States,* 721 F.3d 797, 990 (8th Cir. 2013). Holder first claimed his counsel was ineffective for failing to obtain the expert to dispute the government's evidence that some of the rounds fired during the course of the robbery came from Holder's gun. *Holder*, 721 F.3d at 990. Holder later claimed that his counsel was ineffective for failing to obtain an expert to consider the scenario that confirmed the government's theory and verified its expert's conclusions. *Id.* The court noted that Holder's counsel given, "Holder's diametrically opposed positions," was faced with "a difficult decision regarding how to deal with the government's ballistic expert at trial." *Id.* The court noted that Holder's counsel made a tactical decision to subject the State's ballistics expert to skillful cross-examination rather than subject his own expert to the scrutiny of the State. *Id.* at 991. Finally, the Court held, that even if Holder's counsel was deficient for failing to call a

ballistics expert, Holder could not show he suffered any prejudice. *Id.*

In *Woods v. Sinclair* Woods claimed ineffective assistance of counsel regarding the challenging of the State's DNA evidence in Woods' trial, arguing his attorney lacked training and experience and was incapable of handling the DNA evidence in his case. *Woods v. Sinclair,* 655 F.3d 886, 911-12 (9th Cir. 2011), judgment vacated and remanded on different grounds, *Woods v. Holdbrook,* __ U.S. __, 132 S.Ct. 1819, 182 L. Ed.2d 612 (2012). The Court held "[a]lthough Woods challenged the effectiveness of his trial counsel's treatment of the state's DNA analysis, he presented no facts to the state court that showed the analysis was or could be incorrect." *Woods*, 655 F.3d at 912-13. The Court found that the fact that Woods' counsel "might have challenged the evidence more robustly does not create a 'substantial' likelihood that the result of his trial would have been different but for their shortcomings." *Id.* at 913.

Similar to *Holder*, Mr. Baum was put in a difficult position because given Juntunen's admission Mr. Baum knew the DNA belonged to Juntunen. RP 47. Mr. Baum was put into a position where it was highly likely his expert would be inculpatory,

confirming the State's findings, thereby bolstering the State's DNA evidence. RP 48-49; CP 186. Juntunen, just like in *Woods*, did not present any facts at his hearing to withdraw his guilty plea that showed what an independent DNA expert would have uncovered, produced in favor of Juntunen, or possibly testified to at trial. See RP 19-91; CP 85-120. Juntunen has not met his burden to show his trial counsel was deficient by failing to obtain the DNA expert's services.

Arguendo, if this Court were to find Mr. Baum deficient for failing to obtain an expert's services in regards to the DNA evidence, Juntunen has not met his burden to show that there is a reasonable probability that the result of the proceedings would have been different. *Horton*, 116 Wn. App. at 921-22. Juntunen argues that if the expert had been obtained that he would have potentially rejected the offer and taken the case to trial or he would have potentially negotiated a better plea deal. Brief of Appellant 42. But without a showing of what the expert would have produced these statements are purely speculative. Juntunen cannot meet his burden to show his counsel was ineffective due to Mr. Baum's failure to secure a DNA expert by simply making conclusory or speculative statements. This is not reasonable probability that the

results of the proceedings would have been different and his claim of ineffective assistance of counsel therefore fails.

b. Mr. Baum sufficiently investigated the matter.

Juntunen asserts Mr. Baum failed to properly investigate due to Juntunen's admission to Mr. Baum that he had committed the offense. Brief of Appellant 28-37. This is a grossly inaccurate claim. As stated above in section (a), Mr. Baum did investigate the matter and Juntunen's ineffective assistance of counsel claim fails.

A criminal defendant is entitled to counsel that provides assistance in his or her defense of the charge pending against the defendant. *United States v. Cronic*, 466 U.S. 648, 653-54, 104 S. Ct. 2039, 80 L. Ed.2d 657 (1984). This right entails an attorney who will act as an advocate and protect the adversarial process. *Cronic*, 466 U.S. at 656. A defendant is denied effective assistance of counsel if his or her attorney "entirely fails to subject the prosecution's case to meaningful adversarial testing…" *Id.* at 659. This right does not mean the defendant is entitled to an error free trial or proceedings. *Id.* at 656.

When a defendant raises a failure to investigate claim the defendant must show "a reasonable likelihood that the investigation

would have produced **useful** information not already known to the defendant's trial counsel." *In re Davis*, 152 Wn.2d 647, 739, 101 P.3d 1 (2004) (emphasis added). A defendant who makes a showing that his or her trial counsel failed to investigate still must show that the deficient performance prejudiced him or her. *In re Davis*, 152 Wn.2d at 739. "In evaluating prejudice, ineffective assistance claims based on a duty to investigate must be considered in light of the strength of the government's case." *Id.* (citation and internal quotation marks omitted). Juntunen has not met his burden to show that his attorney failed to investigate, let alone that any investigation would have led to useful evidence.

Mr. Baum reviewed the discovery and performed legal research in the case. RP CP 182, 185. Mr. Baum spoke to witnesses and spent time discussing the case with Juntunen. CP 182, 185. On August 3, 2012 Mr. Baum spent 4.1 hours reviewing discovery and performing legal research. CP 182. On August 8, 2012 Mr. Baum spent 3.5 hours calling witnesses, reviewing discovering and having a conference with Juntunen at the jail. CP 182. On August 10, 2012 Mr. Baum spent 4.1 hours reviewing discovery and searching for an expert witness. *Id.* On August 17, 2012 Mr. Baum spent 3.5 hours doing legal research. *Id.* On August

24, 2012 Mr. Baum spent 2.5 hours having a conference with Juntunen at the jail and calling a witness. *Id.* On August 31, 2012 Mr. Baum spent 3.1 hours performing more legal research and had another conference with Juntunen. *Id.* On September 14, 2012 Mr. Baum spent 3.2 hours searching for experts. *Id.* On September 21, 2012 Mr. Baum spent 2.9 hours doing more legal research and speaking with Juntunen. *Id.* On September 28, 2012 Mr. Baum spent 2.8 hours reviewing the discovery in Juntunen's case. *Id.* On October 5, 2012 Mr. Baum spent 3.6 hours doing legal research, reviewing the discovery and calling witnesses. *Id.* On October 12, 2012 Mr. Baum prepared for an interview with S.E.H., drove to Sumner and interviewed S.E.H., spending a total 6.5 hours on Juntunen's case. *Id.* On October 19, 2012 Mr. Baum spent 3.1 hours speaking to an expert on the phone, preparing a motion for the expert to the court, having the motion denied and having a conference with Juntunen. *Id.* On October 26, 2012 Mr. Baum spoke with Juntunen at the jail, performed legal research and called witnesses for a total of 2.5 hours. *Id.* On November 2, 2012 Mr. Baum spent 2.6 hours reviewing the discovery and meeting with Juntunen at the jail. *Id.* By the State's calculations that is 48 hours on legal research, time spent searching for and speaking with

experts and witnesses and meeting with Juntunen prior to Juntunen's plea of guilty. This does not include a phone conference with Heidi Moses, conferences with the deputy prosecutor or court appearances. See CP 182-83.

Mr. Baum explained that he has experience trying DNA cases. RP 73. Mr. Baum spoke to the State's DNA expert and did not find any issues with the State's case in regards to the DNA. RP 67. Mr. Baum found a DNA expert out of California who had experience with the CODIS system, which is how Juntunen was initially matched to the crime. RP 65. Mr. Baum requested, ex parte, an order allowing him to retain a doctor from California but Judge Hunt denied the request and told Mr. Baum if he wanted an expert to find one in Washington State. RP 65-66. Mr. Baum's further discussion with the DNA expert from the WSP Crime Laboratory led him to believe that perusing that option would not be fruitful and would ultimately be detrimental as once a motion was filed any plea deal would be revoked. RP 69-70.

Juntunen's case in not like *State v. A.N.J.* where A.N.J.'s attorney did virtually nothing on the case. A.N.J., who was 12 years old at the time, plead guilty to one count of Child Molestation in the First Degree. *A.N.J.*, 168 Wn.2d at 96. Prior to pleading guilty,

A.N.J.'s court appointed attorney spent a total of between 35 to 55 minutes with A.N.J. *Id.* at 102. The attorney never spoke to any witnesses, even though he was provided a list of people to contact. *Id.* at 100-101. The attorney never made a request for discovery, filed a single motion, did no independent investigation, did not consult an expert, did not carefully review the plea agreement or explain the registration requirements to A.N.J. *Id.* at 101-17. The Supreme Court held that A.N.J. had not received effective assistance from his attorney. *Id.* at 119-20.

Unlike *A.N.J.,* Mr. Baum's actions show that he did subject the State's case to adversarial testing. While in hindsight, Juntunen would have preferred Mr. Baum to locate a DNA expert in Washington State to pursue that avenue of his case, Mr. Baum's tactical decision at the time does not amount to a complete failure of subjecting the State's case to adversarial testing. Juntunen has not shown that there is a reasonable likelihood that further investigation would have produced useful information not already known to Mr. Baum. *In re Davis,* 152 Wn.2d at 739. There is no showing by Juntunen that Mr. Baum failed to investigate. Arguendo, if Mr. Baum's performance was deficient, there is no showing that further investigation in regards to the DNA would have produced

anything useful or of value for Juntunen's case. Juntunen has the burden of showing this Court that his attorney's alleged deficient performance has prejudiced him and he has not met this burden.

c. Mr. Baum attempted on numerous occasions to negotiate the case with the deputy prosecuting attorney.

Juntunen appears to argue that but for Mr. Baum's failure to better prepare his case, specifically hiring an expert to evaluate the DNA, Mr. Baum would have been able to negotiate a better plea deal for him and therefore, he received ineffective assistance of counsel. Brief of Appellant 41-45. Juntunen also argues that Buam made no meaningful efforts to negotiate a better deal than what the State initially offered. Brief of Appellant 22. It is unclear to the State how Juntunen could make such a bold, erroneous and disingenuous statement given Mr. Baum's testimony to the contrary during the hearing for the motion to withdraw the guilty plea. Mr. Baum attempted to negotiate this case with the deputy prosecuting attorney but was unsuccessful at securing a better deal for Juntunen.

Ineffective assistance of counsel is not established where "the notion that the prosecution would have been receptive to a plea bargain is completely unsupported in the record." *Burger v.*

Kemp, 483 U.S. 776, 785, 107 S.Ct. 31147, 97 L. Ed.2d 638 (1987). There is nothing in the record here that supports the State would have been receptive to a more lenient plea bargain for Juntunen had Mr. Baum produced any additional information. The State, in its response to the motion to withdraw the guilty plea stated, "Furthermore, Mr. Baum could not negotiate a lesser sentence from the deputy prosecutor handling the case, who felt strongly about the case, and was already offering a significant amendment." CP 131.

Mr. Baum explained his negotiations with the State, which corroborates the State's statement in its response brief. Mr. Baum stated,

> I don't know how many times - - it was with you. I don't know how many times you and I talked about the case, but it was a number of times, and I mean the impression you gave me from the discussions is that you felt that what happened here was egregious offense and the aggravators were justified.
>
> I tried on multiple occasions to try to get you to give up on those, with some form of resolution, but you were unwilling to do that. But the predatory allegation isn't the only one that was of concern to me. You had other aggravators that opened up the sentencing range to the maximum, and I think all of these were class A's, so that's life in prison, so - - but you were unwilling to budge and it wasn't - - the impression I got was not because you felt it was mandatory, but

> because you thought it was appropriate given what happened here.

RP 42-43.

There is no evidence that Mr. Baum failed to negotiate the case with the deputy prosecutor or that any further information he provided to the deputy prosecutor would have changed the deputy prosecutor's position in regards to the plea negotiations. The deputy prosecutor was clearly not receptive to any further reduction in charges or aggravating factors. Juntunen cannot meet his burden to show that his trial counsel was deficient, let alone that any deficiency prejudiced him. His ineffective assistance of counsel claim fails.

4. There Was No Conflict Of Interest In Regards To Mr. Baum's Representation Of Juntunen And His Duties As The Municipal Prosecutor For The City Of Vader.

Juntunen argues there was a "clear conflict of interest" because Mr. Baum had a contract with the City of Vader to prosecute municipal cases while also holding a contract to do criminal defense work in Lewis County Superior Court. Brief of Appellant 45-50. Juntunen did not raise this issue for the first time until after his sentencing hearing in his motion to withdraw his guilty

plea. CP 100-05. Juntunen's claimed conflict is nonexistent and frivolous.

A defendant is guaranteed by the Sixth Amendment of the United States Constitution to have assistance of counsel to defend against criminal prosecution. This includes the right to have assistance from counsel that is free from conflicts of interest. *State v. Davis,* 141 Wn.2d 798, 860, 10 P.3d 977 (2000). A trial court is not required to inquire about a conflict of interest unless it knows of an actual conflict or should reasonably know of the conflict. *Davis*, 141 Wn.2d at 860-61. "A defendant who does not raise an objection at trial must demonstrate "*an actual conflict of interest* adversely affected his lawyer's performance" in order to obtain relief on appeal." *Id.* at 861 (italics original). Prejudice is not presumed unless the defendant demonstrates his or her attorney actively represented conflicting interests and that an actual conflict of interest adversely affected his or her attorney's performance. *Id.* at 864.

Juntunen argues, citing *State v. Tracer* and *State v. Tjeerdsma*, that Mr. Baum's contract to provide prosecution services for the City of Vader, a small municipality in Lewis County, was a clear conflict of interest with his representation of Juntunen in

Lewis County Superior Court. Brief of Appellant 47-50, *citing State v. Tracer,* 173 Wn.2d 708, 272 P.3d 199 (2012); *State v. Tjeerdsma*, 104 Wn. App. 878, 17 P.3d 678 (2001). Juntunen is correct and the Washington State Supreme Court found it was a conflict of interest for a defense attorney who regularly appeared in Jefferson County Superior Court to be appointed as a special prosecutor in the same court. *Tracer*, 173 Wn.2d at 720-21. The reasoning is that as a special prosecutor in superior court the State is the attorney's client and as a defense attorney in the same court his client's interests are directly adverse to the State's. *Id.* at 720.

Juntunen then argues that the same conflict appears in his case, that while Mr. Baum represents the City of Vader, this is of no difference because his client became the government. Brief of Appellant 49. The State cannot understand how Juntunen can make such an argument after citing to *State v. Tjeerdsma*, unless Juntunen is simply choosing to ignore half of the opinion of the Division One in regards to conflict of interest in that case.

In *Tjeerdsma* Division One explicitly found that a defense attorney's role as a municipal prosecutor was not a conflict of interest with his role as a defense attorney in Skagit County Superior Court. *Tjeerdsma*, 104 Wn. App. at 883-84. The Court

stated that the attorney's client was the City of Mount Vernon, as designated in the agreement between the City of Mount Vernon and the attorney and the attorney only owed a duty to the City of Mount Vernon. *Id.* at 883. The Court stated Tjeerdsma could not demonstrate there was any conflict between his interest and the City of Mount Vernon. *Id.* at 883-84. Further the Court pointed out Tjeerdsma had "not even identified any act or omission which would indicate that Weyrich's representation was tainted or hampered by a conflict because of some connection to the witnesses or the City of Mount Vernon's Prosecutor's Office." *Id.* at 884.

Similar to *Tjeerdsma,* Mr. Baum represented a municipality, the City of Vader. RP 39. The City of Vader was a small municipal court, in which Mr. Baum handles on average six cases per month. RP 39. Mr. Baum testified that he never had an issue where he was prosecuting someone who he was also appointed to represent as a defense attorney. RP 39-40. Mr. Baum's client when he prosecuted for the City of Vader was not the State of Washington, nor was it some amorphous entity called the government; it was the City of Vader. There was no conflict of interest with Mr. Baum acting as the prosecutor for the City of Vader and representing Juntunen against

the State of Washington in Lewis County Superior Court. Juntunen's claim of a conflict of interest fails.

5. Juntunen's Plea Of Guilty Was Knowing And Voluntary.

Guilty pleas may only be accepted by the trial court after a determination of the voluntariness of the plea is made. CrR 4.2(d). Due process requires that a defendant in a criminal matter must understand the nature of the charge or charges against him or her and may only enter a plea to the charge(s) voluntarily and knowingly. *State v. Robinson*, 172 Wn.2d 783, 790, 263 P.3d 1233 (2011) (citations omitted).

The court rule requires a plea be "made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea." CrR 4.2(d). Prior to acceptance of a guilty plea, "[a] defendant must be informed of all the direct consequences of his plea." *State v. A.N.J.*, 168 Wn.2d at 113-14 (citations and internal quotations omitted). A defendant need not show a direct consequence in which he or she was uninformed about was material to his or her decision to plead guilty. *In re Isadore*, 151 Wn.2d 294, 301, 88 P.3d 390 (2004).

> When a defendant fills out a written statement on plea of guilty in compliance with CrR 4.2(g) and

> acknowledges that he or she has read it and understands it and that its contents are true, the written statement provides prima facie verification of the plea's voluntariness. When the judge goes on to inquire orally of the defendant and satisfies himself on the record of the existence of the various criteria of voluntariness, the presumption of voluntariness is well nigh irrefutable.

State v. Perez, 33 Wn. App. 258, 261-62, 654 P.2d 708 (1982) (citations omitted). To meet his or her burden that a guilty plea was not voluntarily made, a defendant must present some evidence of involuntariness beyond his self-serving allegations. *State v. Osbourne*, 102 Wn.2d 87, 97, 684 P.2d 683, 690 (1984).

The voluntariness of Juntunen's plea is evidenced in Juntunen's Statement of Defendant on Plea of Guilty to Sex Offense (STTDFG) and his Stipulation to Aggravating Factor. CP 29-44.

The trial court conducted a thorough colloquy with Juntunen, in which he communicated an understanding of the charges to which he was pleading and the rights he was giving up. RP 3-7, 10-16. Page 8 of the STTDFG contains the following:

> 7. I plead guilty to:
> count 1 Child Molestation in the 1st in the 2nd Amended Information. I have received a copy of that Information.
>
> 8. I make this plea freely and voluntarily.

> 9. No one has threated harm of any kind to me or to any other person to cause me to make this plea.
>
> 10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.
>
> 11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement: In Lewis Cty on 9-22-07 I had sexual contact with SHE (Dob 9-2-99) whom I am not married and I my dob is 4-30-88.
>
> 12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" Attachment. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

CP 41. Juntunen signed the STTDFG as did his attorney, the deputy prosecuting attorney and the judge. CP 41-42.

During the plea hearing Judge Brosey stated:

> **THE COURT**: Moving on, then, in 12-1-473-5, I have an Amended Information that's been handed to me, which Amended Information - - Second Amended Information charges Child Molestation in the First Degree. Now, the maximum punishment for Child Molestation in the First Degree is life imprisonment and a $50,000 fine being a class A felony, but because this crime is charged under 9 A 44.570 and given the fact that there's an allegation here and it looks like a stipulation to an aggravating factor under 994 A 836, as well as the stipulation to a standard outside the standard range, what you understand here is that you are not only looking at a mandatory minimum sentence here of 25 years on this, if you plead guilty to it, but you are looking at lifetime

supervision, which means for the rest of your natural life, regardless of when and under what circumstances you are released from the Department of Corrections you are under their supervision, and if at any time during the rest of your natural life you violate the terms and condition of the Department of Corrections or their subsequent successor agency, you can be sent back to state prison.

You understand that?

THE DEFENDANT: Yes, Sir.

THE COURT: You understand the significance of that?

All right. Do you understand the charge of Child Molestation in the Frist Degree as alleged in the Second Amended Information?

THE DEFENDANT: Yes, sir.

THE COURT: Do you need me to read that to you this afternoon in open Court were [sic]?

THE DEFENDANT: No, Sir.

THE COURT: To that Second Amended Information, what is your plea this afternoon: Guilty or not guilty?

THE DEFENDANT: Guilty

THE COURT: What did you do, Mr. Juntunen, that makes you think you are guilty of that particular crime?

THE DEFENDANT: I had sexual contact with a minor.

….

THE COURT: Now you are stipulating, Mr. Juntunen, to the exceptional sentence of 25 years to life, 25 year

> minimum, and this is part of the agreement, whereby the original charge, which was more severe is being dismissed and an amended charge of Child Molestation in the First Degree was filed in its stead.
>
> Do you understand that?
>
> **THE DEFENDANT**: Yes.
>
> **THE COURT**: And you are also stipulating to the Court making a factual finding that this offense was committed by you as a predator and that it was predatory in nature; is that correct?
>
> **THE DEFENDANT**: Yes, sir.
>
> **THE COURT**: This is your signature? You did review this, with Mr. Baum before you signed it?
>
> **THE DEFENDANT**: Yes, your Honor.
>
> **THE COURT**: Any further comment on that?
>
> **MS. O'ROURKE**: No, your Honor. Thank you.
>
> **THE COURT**: The Court finds, with respect to all three cause numbers this defendant is competent to knowingly, intelligently, freely and voluntarily enter into these pleas. These pleas are each made, with advice of counsel, on the advice of counsel, with full knowledge of the consequences and awareness of rights.

RP 10-14.

Juntunen has not presented any evidence beside conclusory self-serving statements in his briefing and the motion to withdraw guilty plea that his plea was involuntary. Juntunen did not testify at the motion to withdraw his guilty plea. See RP 19-91. Juntunen has

not even provided an affidavit or declaration claiming his plea was involuntary or unknowing. See CP. Mr. Baum's testimony at the motion to withdraw hearing was contrary to this assertion. Mr. Baum explained that he presented Juntunen with his options, Juntunen chose to plead guilty and he went through the plea form and documents with Juntunen. RP 51-53.

Based on Juntunen's signature on the STTDFG, the trial court's colloquy and Juntunen's admission of his comprehension and the thoroughness of the explanation of the consequences of his plea, Juntunen's plea was made knowingly and voluntarily.

6. Juntunen Did Not Make The Requisite Showing That His Guilty Plea Should Be Withdrawn To Correct A Manifest Injustice.

Juntunen does not have an absolute right to withdraw his guilty plea. Juntunen, as any defendant attempting to withdraw his or her plea, must meet the strict requirements of CrR 4.2(f). Juntunen was unable to meet his burden and the trial court correctly ruled that Juntunen's guilty plea could not be withdrawn because there was not a manifest injustice.

There is no constitutional right to withdraw a guilty plea. *State v. Olmsted*, 70 Wn.2d 116, 118, 422 P.2d 312 (1966). Under the criminal court rules "[t]he court shall allow a defendant to

withdraw the defendant's plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice." CrR 4.2(f).

The defendant bears the burden of proving manifest injustice. *State v. Ross*, 129 Wn.2d 279, 283-4, 916 P.2d 405, 408 (1996). Due to the numerous safeguards in place surrounding a defendant's plea of guilty, the manifest injustice standard is a demanding one. *State v. Arnold*, 81 Wn. App. 379, 385, 914 P.2d 762 (1996), *review denied*, 130 Wn.2d 1003, 925 P.2d 989 (1996). Manifest injustice is defined as "obvious, directly observable, overt, not obscure." *Id.*

A motion to withdraw a guilty plea "is addressed to the sound discretion of the court." *State v. Olmsted*, 70 Wn.2d at 118. A trial court's denial of a motion to withdraw a guilty plea is reviewed under an abuse of discretion standard. *Id.* "A trial court abuses its discretion only when its decision is manifestly unreasonable or is based on untenable reasons or grounds." *State v. C.J.*, 148 Wn.2d 672, 686, 63 P.3d 765 (2003), *citing State v. Stenson,* 132 Wn.2d 668, 701, 940 P.2d 1239 (1997).

As argued above there was substantial evidence presented to the trial court regarding Mr. Baum's effective representation of Juntunen. The colloquy Judge Brosey went through with Juntunen

during his guilty plea coupled with the STTDFG and the Stipulation of Aggravating Factor are competent and substantial evidence that Juntunen made a knowing, voluntary and intelligent decision to plead guilty after being told of the direct and indirect consequences of pleading guilty. *See* RP 3-7, 10-15; CP 29-46.

While Juntunen apparently presented a declaration from his mother, Heidi Moses, which contradicted some of Mr. Baum's version of the events, the trial court is not required to find Juntunen's witnesses credible. *See State ex. rel. Lige v. County of Pierce*, 65 Wn. App. at 618. Given the evidence presented to the trial court from the witnesses, the written plea form signed by Juntunen and the transcript of the plea hearings, which was reviewed by the trial court prior to its ruling on Juntunen's hearing on his motion to withdraw his guilty plea, the trial court did not abuse its discretion when it denied Juntunen's motion to withdraw his guilty plea.[5] The trial court's ruling was not based on unreasonable or untenable grounds or reasons. Furthermore, the trial court's finding that Mr. Baum's performance was not deficient is supported by the evidence. Therefore this Court should affirm the trial court's ruling denying the motion to withdraw the guilty plea.

[5] The transcript was attached to the State's response and it was clear that Judge Brosey looked at the materials presented to the Court prior to the hearing. *See* RP 21-23.

IV. CONCLUSION

The trial court did not abuse its discretion when it denied Juntunen's motion to withdraw his guilty plea. Juntunen's trial attorney gave him effective representation and this Court should affirm the trial court's denial of Juntunen's motion to withdraw his guilty plea.

RESPECTFULLY submitted this 31st day of July, 2015.

JONATHAN L. MEYER
Lewis County Prosecuting Attorney

by:_____
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Attorneys for Plaintiff

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent, vs. REGINALD JUNTUNEN, Appellant.	No. 46110-2-II DECLARATION OF SERVICE

Ms. Teri Bryant, paralegal for Sara I. Beigh, Senior Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On July 31, 2015, the appellant was served with a copy of the **Respondent's Brief** by email via the COA electronic filing portal to Mitch Harrison, attorney for appellant, at the following email address: mitch@mitchharrisonlaw.com.

DATED this 31st day of July, 2015, at Chehalis, Washington.

Teri Bryant

Teri Bryant, Paralegal
Lewis County Prosecuting Attorney Office

LEWIS COUNTY PROSECUTOR

July 31, 2015 - 8:36 AM

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